

**DEPARTMENT OF VETERANS AFFAIRS**

**8320-01**

**38 CFR Part 17**

**Confidentiality of Certain Medical Records under the MISSION Act**

**AGENCY:** Department of Veterans Affairs,

**ACTION:** Notification of change to agency practice.

**SUMMARY:** This Department of Veterans Affairs (VA) document provides an update to VA's requirements for obtaining a signed release of information for third party billing practices from VA beneficiaries with a sensitive diagnosis under the United States Code to align with the amendments made by the VA MISSION Act of 2018.

**DATES:** Effective [insert date of publication in the Federal Register].

**FOR FURTHER INFORMATION CONTACT:** Jennifer Adams, Office of Community Care (10D), Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, Jennifer.Adams26@va.gov, (615)-355-1539. This is not a toll free number.

**SUPPLEMENTARY INFORMATION:** On June 6, 2018, section 132 of Public Law 115-182, the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 (MISSION Act), amended 38 U.S.C. 7332, *Confidentiality of certain medical records*, which protects certain sensitive diagnoses (i.e., drug abuse, alcoholism or alcohol abuse, infection with the human immunodeficiency virus, or sickle cell anemia) from being disclosed unless expressly authorized by the patient. The VA Mission Act of 2018 amended section 7332 by providing a new exception to the requirement that a patient must expressly authorize VA to disclose medical records containing a sensitive

diagnosis. The exception removed VA's requirement when VA is billing a third-party for medical care cost recovery.

In addition to this document, VA will announce these changes on Veteran-facing Web sites to reach as many VA beneficiaries as possible. VA will also conduct a briefing with Veteran Service Organizations to ensure they are informed of the changes. For any VA beneficiary who has previously signed a release of information declining to allow VA to bill encounters containing a sensitive diagnosis, VA will provide a one-time notification prior to submitting claims with a sensitive diagnosis to a third-party health insurer. The written notification will include a summary of the new law, how the change affects the patient, and a description of the types of services affected by the change.

After all of the aforementioned notifications are complete, VA will begin submitting claims to health insurance companies for encounters with dates of service on or after the publication date of this document in the Federal Register that contain a sensitive diagnosis without a signed release of information. While VA's billing authorities allow for a window of up to 6 years to bill a health insurance company for services provided, VA will not pursue any back billing for these services unless a signed Request For and Authorization to Release Medical Records or Health Information (VHA-10-5345) form for such release has been received from the patient. All required payer policies still apply to any services submitted for reimbursement.

#### Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of

Veterans Affairs. Robert L. Wilkie, Secretary, Department of Veterans Affairs, approved this document on December 21, 2018, for publication.

Dated: December 21, 2018

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**Luvenia Potts**

Program Specialist,  
*Office of Regulation Policy & Management,*  
*Office of the Secretary,*  
*Department of Veterans Affairs.*

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